

38.5.1401 DEFINITIONS For purposes of this subchapter:

~~(1) "Appliances essential for maintenance of health" means any electric or gas energy-using device which is certified by a licensed physician as being essential to prevent or to provide relief from serious illness or to sustain the life of a member of the household and for which there is no reasonable alternative.~~

(2) "Customer" means any purchaser of gas or electric service supplied by a utility ~~for residential purposes~~. A person who requests disconnection of service at his or her current address in order to move service to his or her new address with no break in the service is an existing customer, not an applicant for new service.

(3) "Delinquent account" means an account for residential service which remains unpaid for at least 30 days after the bill is rendered. The exact due date shall be printed on the face of the bill.

(4) "Elderly" means any residential electric or gas consumer aged 62 or older, who resides at the service address.

(5) ~~"Handicapped"~~ "Person with a disability" means any residential electric or gas consumer who resides at the service address and has any physical or mental impairment which substantially limits one or more of such person's life activities, and such person:

~~——(a) is certified as being physically disabled by a licensed physician, or~~

~~——(b) is certified as being mentally disabled by a licensed psychiatrist or registered psychologist, veterans administration, social security administration, or local board of health.~~

(6) "Landlord customer" means one or more individuals or an organization listed on a gas or electric utility's records as the party responsible for payment of the gas or electric service provided to one or more residential units of a building, which is occupied by a tenant.

(7) "Person unable to pay or to pay only in installments" means any purchaser of electric or gas service for residential purposes, who is a recipient of public assistance ~~and/or has an income at or below federal poverty guidelines.~~

(8) "Residential building" means a building containing one or more dwelling units occupied by one or more tenants, but excluding hotels and motels not used primarily for residential purposes.

(9) "Tenant" means any person or group of persons whose dwelling unit in a residential building is provided natural gas or electricity, pursuant to a rental agreement, but who is not the customer of the utility which supplies said gas or electricity.

(10) "Termination of service" means a cessation of residential service effectuated by the utility and not voluntarily requested by a customer. (History: Sec. 69-3-103, MCA; IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 641, Eff. 2/29/80; AMD, 2000 MAR p. 1080, Eff. 4/28/00.)

38.5.1402 GROUNDS FOR TERMINATION OF SERVICE (1) Subject to the requirements of these rules, a utility may terminate service to a customer for any of the following reasons:

- (a) Nonpayment of a delinquent account;
- (b) Misrepresentation of identity for the purpose of obtaining utility service;
- (c) Unauthorized interference, diversion or use of the utility's service situated or delivered on or about the customers premises;
- (d) Failure to comply with the terms and conditions of a deferred payment agreement made in accordance with these rules;
- (e) Refusal to grant a duly authorized representative of a utility access to equipment upon the premises of the customer at reasonable times for the purpose of inspection, maintenance or replacement when the utility has given the customer reasonable notice of the need for such access and the time of visitation;
- (f) Violation of other rules of the commission or utility which adversely affects the safety of the customers or other persons, or the integrity of the utility's delivery system. (History: Sec. 69-3-103, MCA; IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 642, Eff. 2/29/80.)

38.5.1403 PROHIBITED GROUNDS FOR TERMINATION OF SERVICE (1)
Neither of the following shall constitute grounds for a utility to terminate service:

(a) The failure of any person, other than the customer against whom termination is sought, to pay any charges due to the utility;

(b) The failure of a customer to pay for merchandise, appliances or other services not contained in tariffs approved by the commission. (History: Sec. 69-3-103, MCA; IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 644, Eff. 2/29/80.)

38.5.1404 STATEMENT OF TERMINATION POLICY (1) A current general statement of the utility's termination policy shall be posted in all local business offices of the utility, shall be made available upon request to all existing customers and shall be provided to all new customers when they initiate service. This statement must be written in clear and understandable language and must include the following information:

(a) The time allowed to pay outstanding bills;

(b) A statement that arrangements for installment payment of delinquent bills can be made at any time prior to termination of service;

(c) The title and telephone number of the utility employee to which inquiries and disputes may be directed;

(d) The time allowed to initiate a dispute;

(e) Instructions for designating a third party to receive a copy of termination notices;

(f) Instructions for designating elderly or handicapped status or a medical emergency;

(g) Instructions for designating the presence of special appliances essential for maintenance of health or safety.

(h) Details of the method of termination as described in ARM 38.5.1413.

(i) Availability of a copy of the Commission's rules on termination of service.

(History: Sec. 69-3-103, MCA, IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 644, Eff. 2/29/80.)

38.5.1405 NOTICE PRIOR TO AND AT THE TIME OF TERMINATION (1) A utility may not terminate service to any residential, firm, commercial, industrial or other customer unless written notice is served.

(2) Termination notice shall be served as follows:

(a) If no response to the first notice is received within ten days of mailing, the utility must send a second notice by first class or certified mail (return receipt requested). The second notice must be sent by the utility or personally served on the customer at least ten days prior to the date of the proposed termination.

~~—— (b) A utility may terminate utility services upon serving written notice five business days prior to the proposed termination date when a customer:~~

~~—— (i) remits an insufficient funds check as payment to the utility after receiving the first notice of termination, or~~

~~—— (ii) breaches a payment agreement made pursuant to ARM 38.5.1415.~~

~~(c)~~ (b) The provisions of (a) shall govern notice of termination to landlord customers, except that the first notice must be sent at least 30 days prior to the date of the proposed termination.

~~(d)~~ (c) The utility shall give written notice of the proposed termination for nonpayment to the Commission and to each residential unit reasonably likely to be occupied by an affected tenant of a landlord customer subject to termination. Such notice shall not be rendered earlier than five business days following initial notification to the landlord customer. However, if the landlord customer disputes the amount owing, such notice shall not be rendered until the dispute has been resolved. In no event shall such notice be served upon the tenants less than 15 days prior to the termination of service to the landlord customer on account of nonpayment. Upon affidavit, the Commission may, for good cause shown by the utility, reduce the minimum time between notification of the landlord customer and notification of the tenants.

~~(e)~~ (d) Prior to termination of service the utility must make a diligent attempt to contact the customer, either in person or by telephone, to apprise him of the proposed action. If telephone or personal contact is not made, the utility employee shall leave notice in a place conspicuous to the customer that service will be terminated ~~on the next business day~~ unless the delinquent charges have been paid or satisfactory

arrangements have been made. The notice must provide the proposed disconnect date.

(3) A utility may terminate utility services upon serving verbal or written notice five business days prior to the proposed termination date when a customer:

_____ (i) remits a payment to the utility that is refused as a result of insufficient funding, after receiving the first notice of termination, or

_____ (ii) breaches a payment agreement made pursuant to ARM 38.5.1415.

~~(3)~~ (4) When service is terminated, the utility employee terminating service shall leave notice upon the premises in a place conspicuous to the customer that service has been terminated which gives the address and telephone number of the utility where the customer may arrange to have service restored. The utility shall have personnel available after the time of termination and during normal business hours authorized to reconnect service if the conditions cited as grounds for termination are corrected to the utility's satisfaction and upon payment of any reconnection charge specified in the utility's filed tariffs. (History: Sec. 69-3-103, MCA, IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 645, Eff. 2/29/80; AMD, 1982 MAR p. 2177, Eff. 12/31/82.)

38.5.1406 CONTENTS OF WRITTEN NOTICE (1) The written notices required by these rules must contain:

- (a) The utility's statement of termination policy;
- (b) An identification of the customer and service account affected by the proposed termination;
- (c) A statement of reasons for termination;
- (d) The date of proposed termination;
- (e) The amount of the reconnection fee, if any;
- (f) A summary of rights and remedies, including procedures to dispute the termination notice, provisions relating to elderly and handicapped consumers and those suffering a medical emergency, provisions for customers who are unable to pay their bills and steps necessary to make a claim of inability to pay, availability of installment payment arrangements and sources of financial assistance.
- (g) Designation of the bill in question as actual or estimated;

(h) Except for notification of tenants, amount owed and time period over which amount was incurred;

(i) Instructions on how service can be restored;

(j) In the case of a landlord customer, the date on or after which the utility will notify tenants of the proposed termination.

(k) In the case of notification of tenants:

(i) The amount of an average monthly bill for utility service to the premises and the largest bill for utility service to the premises in the previous 12 months;

(ii) A statement that Commission procedures and the Laws of Montana may give the tenant certain rights with respect to which the tenant may wish to consult an attorney or Montana Legal Services. (History: Sec. 69-3-103, MCA, IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 647, Eff. 2/29/80.)

38.5.1407 GROUNDS FOR TERMINATION OF SERVICE WITHOUT WRITTEN NOTICE (1) A utility may terminate service without prior notice only:

(a) If a condition immediately dangerous or hazardous to life, physical safety or property exists;

(b) Upon order by any court, the Commission or any other duly authorized public authority;

(c) If such service is obtained fraudulently or without authorization of the utility.

(History: Sec. 69-3-103, MCA, IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 648, Eff. 2/29/80.)

38.5.1408 CUSTOMER'S RIGHT TO DISPUTE A TERMINATION NOTICE

(1) Utilities must provide a reasonable procedure for customers to dispute the termination of service. If the utility decides such a dispute against the customer, it must ~~do so in writing and must~~ advise the customer that he or she may appeal the decision to the Commission. If the Commission is not able to resolve the complaint informally, formal complaint proceedings under ARM 38.2.2101, may be instituted by the customer.

(2) In its investigation of the proposed termination or during any hearing regarding the proposed termination, the Commission may make inquiry of the parties as to the following matters, among others:

(a) The extent to which the customer has control over their source of money for payments, including such matters as the lateness of public assistance checks;

(b) Weather conditions;

(c) The existence of illness of residents in the affected residences;

(d) The ages of the persons residing in the affected units;

(e) The existence of, or potential for, termination of service by other companies.

(3) The Commission may consider and give due weight to the above matters in any decision rendered on the appeal. (History: Sec. 69-3-103, MCA, IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 648, Eff. 2/29/80.)

38.5.1409 TERMINATION NOTICE FOR NONPAYMENT-WHEN PROHIBITED

(1) A notice of termination of service may not be issued for nonpayment of a delinquent account if the entire amount is disputed by the customer and the customer is currently negotiating the dispute with the utility or has filed a complaint with the commission. A utility may, however, issue a notice of termination of service with respect to that portion of any delinquent account which is not disputed by the customer. (History: Sec. 69-3-103, MCA, IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 649, Eff. 2/29/80.)

38.5.1410 CRITERIA FOR TERMINATION OF SERVICE BASED ON TIME OF YEAR OR WEATHER DURING WINTER MONTHS (1) Except as provided in ARM 38.5.1407, during the period December 1 through the last day of February, November 1st to April 1st and on any day when the reported ambient air temperature at 8:00 a.m. is at or below freezing or if the U.S. Weather Service forecasts a snowstorm or freezing temperatures for the succeeding 24-hour period, no termination of service may take place if: the customer establishes that he or she is unable to pay, or able to pay only installments, that he or she or a member of the household is at least 62 years old or that he or she or a member of the household is handicapped.

~~(2) no termination of service may take place during the period of November 1st to April 1st except with specific prior approval of the Commission.~~

(a) the account has a delinquent balance less than \$200; or

(b) a minimum payment of at least 33% of the delinquent charges has been made in the last 30 days; or

(c) the customer establishes that he or she is unable to pay, or able to pay only in installments, that he or she or a member of the household is at least 62 years old or that he or she or a member of the household is a person with a disability.

(2) The commission may intervene and delay termination of services if exceptional circumstances exist.

(3) No termination of residential service may take place on any day when the reported ambient air temperature at 8:00 a.m. is at or below 20 degrees or if the U.S. Weather Service forecasts a snowstorm or temperatures below 20 degrees for the succeeding 24-hour period.

(History: Sec. 69-3-103, MCA, IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 650, Eff. 2/29/80.)

38.5.1411 MEDICAL EXCEPTIONS (1) Except as provided herein, service may not be terminated to a residence where a licensed health care professional certifies to the utility that the absence of service will aggravate an existing medical condition which would threaten the health of any permanent resident. A licensed health care professional means a licensed physician, physician assistant-certified, advanced practice registered nurse, or registered nurse provided for in ARM 37.106.2805 and Title 37, MCA. All certifications must be in writing and provide the name and address of the person with the medical condition that would be aggravated by a termination of service. The certification must include the printed name, signature, office address, and telephone number of the certifying licensed health care professional. A medical condition certificate is valid for 180 days from the date it is signed and dated by the licensed health care professional, and may be renewed on a semiannual basis.

(2) To avoid the accumulation of a substantial arrearage during the term of the medical certificate, ~~the utility and the customer, or an authorized representative of the customer, shall negotiate an equitable payment arrangement that is reasonable and consistent with the customer's ability to pay. If the customer fails to make payments as established, resulting in an arrearage of \$500 or more,~~ the customer is required to enter into and comply with a monthly payment arrangement equal to the average of the last 12 months billing usage calculated at current rates, plus ~~4/12~~ 1/6 of the arrearage. Failure to enter into a monthly payment arrangement and make payments will result in disconnection proceedings being initiated as set out in (3).

(3) The utility must provide written notice of the initiation of disconnection proceedings to the customer. If the missed payments are not received within ten days of mailing, the utility must send a second notice. From the date of the second notice the customer must pay at least one-third of the delinquent charges or the missed payments, whichever is greater, to avoid termination of service. The second notice must be sent by the utility at least ten days prior to the date of the proposed termination. All written notices must be sent by first class or certified mail. Prior to termination of service the utility must make a diligent attempt to contact the customer, either in person or by telephone, to apprise the customer of the proposed action. If telephone or personal contact is not made, the utility employee shall leave notice in a place conspicuous to the customer that service will be terminated ~~on the next business day~~ unless the required payment has been made. The notice must provide the proposed disconnect date. If the required payment is made, ~~a new payment arrangement will be recalculated consistent with (2).~~ the payment arrangement established in (2) will be re-instated. Under no circumstances shall disconnection proceedings occur on accounts with an arrearage of less than ~~\$500~~ \$300. Nothing in this rule prevents a utility from continuing service to a delinquent medically protected account.

(4) The utility must notify the commission in writing of the proposed termination at the beginning of the disconnection process. The commission may intervene and require a different payment arrangement or delay termination of services if the circumstances warrant. Before the commission will consider approving an alternate payment arrangement, the customer must apply, if eligible, for financial aid through

organizations providing utility bill payment assistance and must respond to commission requests for information. The payment arrangement set by the commission is binding upon both the customer and the utility. Failure to comply with the payment arrangement may result in disconnection proceedings being initiated as set out in (3).

(5) From ~~November~~ December 1 through ~~March 31~~, the last day of February, the utility may not terminate a medical exception account protected from disconnection by the criteria established in ARM 38.5.1410. no termination of service may take place if the customer meets the criteria established in ARM 38.5.1410(1). (History: 69-3-103, MCA; IMP, 69-3-102, MCA; NEW, 1980 MAR p. 651, Eff. 2/29/80; AMD, 2010 MAR p. 754, Eff. 3/26/10.)

38.5.1412 TIME OF TERMINATION (1) Service shall not be discontinued for non-payment on a day, or a day immediately preceding a day, when the services of the utility are not available to the general public for the purpose of reconnecting terminated service. Service may be terminated for non-payment only between the hours of 8:00 a.m. and 12:00 noon. (History: Sec. 69-3-103, MCA, IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 652, Eff. 2/29/80.)

38.5.1413 METHOD OF TERMINATION (1) Actual termination may not take place until ~~one~~ two days after personal or telephone notice or, in the alternative, ~~one~~ two business days after notice has been posted in a place conspicuous to the customer when the customer was not contacted personally or by phone.

(2) The utility's representative (employee) shall attempt to inform the occupant of the affected residence that service is to be discontinued. The employee ~~shall present the occupant with a statement of charges due and~~ shall request verification that the delinquent charges have not been paid or are not subject to a dispute previously registered with the utility or the Commission. Upon the presentation of evidence which reasonably indicates that the charge has been paid or is subject to a dispute previously registered with the utility or the Commission, service shall not be terminated.

~~(3) The employee shall be authorized to accept payment. If payment in full of all delinquent charges is tendered, service shall not be terminated.~~

~~———(4) Payment may be tendered in any reasonable manner including personal check. Payment by personal check is not reasonable if the customer has paid the utility with checks returned for insufficient funds twice or more within the previous two years.~~

(History: Sec. 69-3-103, MCA, IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 653, Eff. 2/29/80.)

38.5.1414 THIRD-PARTY NOTIFICATION AND CONTINUATION OF SERVICE (1) If a customer designates a third person to receive customer notifications of termination of service, the utility shall forward a duplicate of such notices to the designated third party. The third party so notified will not be liable for the account of the customer, unless he or she has agreed to be a guarantor for the customer.

~~(2) Each utility shall promptly, and in no event later than 90 days after the effective date of these rules, devise procedures reasonably designed to provide a voluntary system of third party notification for all customers. Such procedures shall be submitted by each company in writing to the Commission. The Commission may require, by a written notification, such modifications of a utility's procedures as it considers reasonably necessary to carry out the purposes of this rule.~~

(3) Each utility shall have procedures in place to allow for the uninterrupted continuation of service from one account holder to another when service is disconnected.

(History: Sec. 69-3-103, MCA, IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 654, Eff. 2/29/80.)

38.5.1415 PAYMENT ARRANGEMENTS (1) When a customer cannot pay a bill in full, the utility may continue to serve the customer if the customer and the utility can agree on a reasonable portion of the outstanding bill to be paid immediately, and the manner in which the balance of the outstanding bill shall be paid.

~~(2) In deciding on the reasonableness of a particular agreement, the utility shall take into account the customer's ability to pay, the size of the unpaid balance, the customer's payment history, and the amount of time and reasons why the debt is outstanding.~~

~~(3)~~ (2) If a customer fails to make the payment agreed upon by the date that it is due, the utility may, but is not obligated to, enter into a second such agreement.

~~(4)~~ (3) No such agreement or settlement shall be binding upon a customer if it requires the customer to forego any right provided for in these rules. (History: Sec. 69-3-103, MCA, IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 654, Eff. 2/29/80.)

38.5.1416 IDENTIFICATION OF LANDLORD CUSTOMERS ~~(1) Utilities shall attempt to determine, prior to termination, whether the residence subject to termination is occupied by a tenant. Repealed. (History: Sec. 69-3-103, MCA, IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 655, Eff. 2/29/80.)~~

38.5.1417 NOTICE TO COMMISSION OF TERMINATIONS AFFECTING TENANTS ~~(1) Notwithstanding anything contained elsewhere in these rules, prior to any termination for nonpayment which would affect tenants, the utility shall notify the Commission in writing of the proposed termination. Upon notice and investigation of such proposed termination, or during any hearing pursuant to the complaint procedures provided for in ARM 38.2.2101 et seq., the Commission may make inquiry of the parties as to the following matters, among others:~~

~~—— (a) The amount the tenants have paid to the utility in relation to the amount equal to one month's bill, and the arrearage on any earlier bill due from tenants;~~

~~—— (b) The number of vacant units in the building;~~

~~—— (c) The extent to which the tenants have control over their source of money for rent payments, including such matters as the lateness of public assistance checks, direct rent payments by the Welfare Department to the tenants' landlord, or participation by tenants in a leased housing or rental assistance program;~~

~~—— (d) Whether the tenants are engaged in rent withholding against their landlord;~~

~~—— (e) The amount of payments recently received by the utility from the landlord and the size of the past due bill of the landlord;~~

~~—— (f) Whether the utility has pursued collection remedies, other than threatened termination of service, against the landlord;~~

~~—— (g) Weather conditions;~~

~~—— (h) The existence of illness of persons residing in the affected units;~~
~~—— (i) The ages of the persons residing in the affected units;~~
~~—— (j) The availability of other housing to the tenants; and~~
~~—— (k) The existence of, or potential for, termination of service by other companies.~~
~~—— (4) The Commission may consider and give due weight to the above matters in any decision rendered on the complaint. Repealed. (History: Sec. 69-3-103, MCA, IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 657, Eff. 2/29/80.)~~

38.5.1418 EXEMPTIONS (1) If hardships result from the application of any of these termination rules, or if unusual difficulty is involved in complying with any of these rules, application may be made by any utility to the Commission for permanent or temporary exemption from its provision, but such application shall be supported by full and complete justification for such action. (History: Sec. 69-3-103, MCA; IMP, Sec. 69-3-102, MCA; NEW, 1980 MAR p. 658, Eff. 2/29/80.)

38.5.1419 PROCEDURES AND FORMS (1) Each utility shall provide the Commission with all written procedures and copies of all documents used to communicate with their customers, and shall provide updates any time a document or procedure is revised.

Notes for Consideration:

**Should ARM 38.5.1405(4) indicate how long the utility has to reconnect service? The way the rule is worded a consumer may assume they will be disconnected same day, but we know that is not the case with any utility. And what would be appropriate – the 24 hours they now use, or if payment is received by noon restoral before end of day? 12 hours? Something else?

**Should ARM 38.5.1410(1)(c) include families with very young children, say 2 years old? If we do add that, how would a consumer prove there is a young household member? When it is questionable for 62 or older, the utility will ask for a piece of mail that has that person's name and the address in question, but that would not work for children. Should we change 62 to 65?

**Should ARM 38.5.1401(5) be tightened up? Do SSDA and VA disability mean the person is 100% handicapped/disabled or can somebody get those pensions without being 100% disabled? Do we want protection to extend only to those 100% disabled? With HIPPA laws how much should the utility or our office even be asking?